



Resolution of Disapproval to Repeal the Social Security NICS Regulation

S.J.Res 14 / H.J.Res 40 | 32 Bipartisan Senate Cosponsors | Passed House 235-180

Background

The *Gun Control Act of 1968* (GCA) prohibits certain persons from purchasing or possessing firearms, including those who have been “adjudicated as a mental defective.” In 1997 the ATF defined this as a “determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease” is “a **danger to himself or to others**” or “[l]acks the mental capacity to **contract** or manage his own affairs.”

The *NICS Improvement Act of 2007* requires federal agencies to report individuals to the National Instant Criminal Background Check System (NICS) if agency records demonstrate that he or she is prohibited from possessing a firearm under the GCA. NICS is used to determine eligibility for firearm purchases.

Social Security Regulation

The Social Security Administration (SSA) regulation does not require the agency to find individuals to be mentally ill or dangerous before reporting them to NICS. It also does not require the agency to afford a hearing prior to reporting them to NICS, and places a significantly higher burden of proof on individuals to restore revoked rights.

Regulation Fails to Meet ATF’s Definition of “Adjudicated Mental Defective”

The regulation would consider individuals to be mentally defective if they have a disorder on the SSA’s Mental Disorders List and require benefit payments to be made through a representative payee. This process is inconsistent with the federal “mental defective” standard. The Disorders List was never designed to regulate firearms and the disorders in large part are unrelated to whether a person can safely manage a firearm.

The list of disorders is also vague, and **the regulation does NOT require SSA to find that the individual has a mental illness or is a danger to himself or others.** Disorder examples: eating disorders, disorders that cause “restlessness,” “fatigue,” or “feelings of inadequacy.”

Individuals who use a representative payee to manage benefits still have the legal capacity to **contract**, illustrating the low standard the government must meet to report names to NICS.

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Lack of Due Process

An individual is not afforded a hearing before being reported to NICS. Federal law (18 U.S.C. 922(d)(4)) requires that a formal hearing be afforded. An ATF Federal Register Notice (61 Fed. Reg 47097) noted the same.

Inconsistent Legal Standards

While SSA only needs to prove that the individual uses a representative payee and has a disorder on the list to revoke the constitutional right under the regulation, the individual must prove that s/he is not a danger to self or others to have the right restored, a much higher legal standard. These inconsistent standards, as well as placing the burden of proof on the individual rather than SSA, are unfair and arguably unconstitutional.

Bipartisan Resolution of Disapproval (S.J.Res. 14 / H.J.Res. 40)

If H.J.Res. 40 is approved by the Senate and signed by the President, SSA's regulation would be blocked from taking effect. The House of Representatives already approved the resolution. Senate Judiciary Committee Chairman Chuck Grassley and Senator Mike Crapo introduced the Senate's identical version, S.J.Res. 14, with 31 bipartisan cosponsors.

Support from Disability and Civil Rights Organizations

More than 20 disability and civil rights groups are in support of the resolution of disapproval.

Supporters include:

- [American Association of People with Disabilities](#)
- [Arc of the United States](#)
- [Autistic Self Advocacy Network](#)
- [Bazelon Center for Mental Health](#)
- [Consortium for Citizens with Disabilities](#)
- [Disability Law Center](#)
- [National Association for Rights Protection and Advocacy](#)
- [National Coalition for Mental Health Recovery](#)
- [National Council on Disability](#)
- [National Council on Independent Living](#)
- [National Disability Rights Network](#)
- [National Rifle Association](#)
- [New York Association of Psychiatric Rehabilitation Services](#)
- [ADAPT](#)
- [Association of Mature American Citizens](#)
- [National Association of County Behavioral Health and Developmental Disability Directors](#)
- [& National Association for Rural Mental Health](#)
- [American Civil Liberties Union](#)
- [National Disability Leadership Alliance](#)
- [National Association for Gun Rights](#)

Protections Remain In Place

Importantly, **if this regulation is overturned, existing gun-safety protections will still be in place.** Federal law will still prohibit, for example, dangerous and mentally ill individuals from getting firearms. Felons and those with domestic violence convictions also will continue to be prohibited from getting firearms as well.